

DOCKET FILE COPY ORIGINAL

LAWYERS



Davis Wright Tremaine LLP

ORIGINAL

ANCHORAGE BELLEVUE BOISE CHARLOTTE HONOLULU LOS ANGELES PORTLAND RICHLAND SAN FRANCISCO SEATTLE WASHINGTON, D.C. SHANGHAI

ROBERT S. TANNER  
Direct (202) 508-6615  
robbtanner@dwtt.com

SUITE 700  
1155 CONNECTICUT AVENUE NW  
WASHINGTON, D.C. 20036-4313

TEL (202) 508-6600  
FAX (202) 508-6699  
www.dwt.com

May 1, 1998

RECEIVED

MAY 1 - 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Re: Petition for Declaratory Ruling Or, In the Alternative, For Rulemaking on Defining Certain Incumbent LEC Affiliates as Successors, Assigns, or Comparable Carriers Under Section 251(h) of the Communications Act, CC Docket No. 98-39.

Dear Ms. Salas:

Enclosed for filing are NEXTLINK Communications, Inc., comments concerning the Petition for Declaratory Ruling Or, In the Alternative, For Rulemaking on Defining Certain Incumbent LEC Affiliates as Successors, Assigns, or Comparable Carriers Under Section 251(h) of the Communications Act filed by the Competitive Telecommunications Association, Florida Competitive Carriers Association and the Southeaster Competitive Carriers Association.

Very truly yours,

Davis Wright Tremaine LLP

Robert S. Tanner, Esq.

No. of Copies rec'd  
List ABCDE

0+14

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

<b>Petition On Defining Certain Incumbent LEC Affiliates</b>	)	
<b>As Successors, Assigns, or Comparable Carriers</b>	)	
<b>Under Section 251(h) of the Communications Act</b>	)	
<hr/>		

**CC Docket No 98-39**

**COMMENTS OF  
NEXTLINK COMMUNICATIONS, INC.**

**I. Introduction**

NEXTLINK Communications, Inc. ("NEXTLINK") hereby supports the above-captioned petition filed by the Competitive Telecommunications Association, Florida Competitive Carriers Association, and the Southeastern Competitive Carriers Association ("CompTel Petition").

NEXTLINK is a nationwide, facilities-based provider of competitive telecommunications services that currently operates sixteen (16) high-capacity, fiber optic networks providing switched local and long-distance services in twenty-six (26) markets in eight states.<sup>1</sup> If incumbent local exchange carriers ("ILECs") are able to circumvent their obligations under the Telecommunications Act of 1996 ("1996 Act") through the creation of affiliates that provide in-region local exchange and/or exchange access services, NEXTLINK and other competitive local exchange carriers ("CLECs") will be unable to compete, and the goal of the 1996 Act to open local exchange markets to competition will be thwarted.

---

<sup>1</sup> NEXTLINK Communications, Inc. provides local exchange service through its affiliate companies: NEXTLINK Tennessee, L.L.C., NEXTLINK Illinois, Inc., NEXTLINK Ohio, L.L.C., NEXTLINK California, L.L.C., NEXTLINK Washington, L.L.C., NEXTLINK Utah, L.L.C., NEXTLINK Pennsylvania, L.L.P., and NEXTLINK Nevada, L.L.C. All references to NEXTLINK are to NEXTLINK Communications, Inc., and the operations of all

## **II. Summary**

NEXTLINK supports the CompTel Petition for a declaratory ruling clarifying that ILEC affiliates that provide in-region local exchange and/or exchange access services, such as BellSouth's affiliate BellSouth BSE, should be treated as ILECs. No legitimate purpose exists for an ILEC to establish an affiliate to provide local exchange and/or exchange access services in the ILEC's in-region territory, other than for the ILEC to avoid its obligations under the 1996 Act. It is not necessary for ILECs to establish a separate in-region affiliate carrier for the ILEC itself to provide bundled service packages or services to customers both inside and outside of its in-region territory. Furthermore, if ILECs are allowed to create separate affiliate carriers that are unregulated, or treated as competitive local exchange carriers, the ILEC gains pervasive opportunities to evade or nullify its responsibilities under the 1996 Act. To protect against these dangers to still-nascent competition in the local exchange market, the public interest would be served best by declaring that all ILEC affiliates that provide local exchange and/or exchange access services in the in-region territory of the ILEC are also ILECs under Section 251(h).

## **III. ILEC In-Region Affiliates Have No Legitimate Purpose Other Than To Avoid an ILEC's Obligations Under the 1996 Act.**

In the 1996 Act, Congress imposed obligations specific to ILECs that it found necessary to protect local exchange competition from the near-monopoly power held by these dominant carriers.<sup>2</sup> However, as discussed in the CompTel Petition, a number of ILECs are now attempting to establish affiliates to operate as competitive providers of local exchange and/or

---

its local exchange affiliate companies unless otherwise noted.

<sup>2</sup> See e.g., 47 U.S.C. § 251(c).

exchange access services.<sup>3</sup> If an ILEC creates such an affiliate to provide service in new markets where the ILEC lacks market power, there is no apparent conflict with the ILEC's obligations under the 1996 Act. As discussed below, however, an ILEC's attempt to provide local exchange and/or exchange access services through such a competitive affiliate, *in its own service area (i.e. its in-region territory)* could allow the ILEC to evade its obligations under the 1996 Act.

For example, BellSouth has created an entity called "BellSouth BSE" for which BellSouth is attempting to gain certification in BellSouth's in-region states. In Georgia, BellSouth already has received an interim certificate of authority for BellSouth BSE to provide local exchange services through resale of BellSouth's retail services and the use of BellSouth's unbundled network elements.<sup>4</sup> BellSouth has indicated that BellSouth BSE will provide integrated bundles of services to business customers inside and outside of BellSouth's in-region territory.<sup>5</sup>

Although BellSouth may desire to present BellSouth BSE as a wholly separate entity, there is substantial overlap between BellSouth BSE, its corporate parent and the existing BellSouth incumbent affiliate.<sup>6</sup> For example, BellSouth makes no secret of the fact that BellSouth BSE will use the BellSouth name in its marketing efforts, capitalizing not only on the existing business goodwill associated with the BellSouth name in its in-region territory, but also the potential for consumer confusion between the existing BellSouth incumbent affiliate and the

---

<sup>3</sup> CompTel Petition at 3.

<sup>4</sup> Georgia Public Service Commission, Docket No. 8043-U, Interim Certificate of Authority to Provide Competitive Local Exchange Telecommunication Services, (Mar. 9, 1998) ("BSE Certificate"). Included as Attachment A is a copy of MCI Telecommunications Motion for Reconsideration of BellSouth BSE's Interim Certificate of Authority, and as Attachment B is a copy of BellSouth BSE's Interim Certificate of Authority.

<sup>5</sup> Georgia Public Service Commission, Docket No. 8043-U, Hearing, (Dec. 15, 1998) ("GA PSC Hearing"). Testimony of Robert C. Scheye, Vice President, Supplier Development and Business Relations for BellSouth BSE, Inc., at Tr. 111-12.

<sup>6</sup> CompTel Petition at 5.

newer BellSouth BSE.<sup>7</sup>

BellSouth, and other ILECs, already can provide integrated packages of services without creating a separate affiliate in their in-region territories. In fact, nothing prohibits BellSouth from jointly marketing together the services of its ILEC and other affiliates, whether through the BellSouth ILEC, or through another entity. Therefore, the Commission should look carefully at the dangers inherent in allowing ILECs to establish separate competitive affiliates to provide services in their in-region territory.<sup>8</sup>

First, the creation of a separate affiliate would permit ILECs to circumvent the wholesale pricing requirement of Section 251(c)(4). If a competitive affiliate of the ILEC were able to market local services under the same name as the ILEC at prices below those of the ILEC's tariffed rates, consumers would believe that those lower prices were the market price for the ILEC's local service. As such, legitimate competitive local providers would be forced to meet or beat the competitive affiliate's lower rates. Further, the ILEC's competitive affiliate could then price its retail services at the same level or below the level of the wholesale rate provided by the ILEC itself, and no competitor, no matter how efficient, could compete on a resale basis.<sup>9</sup> For example, because BellSouth's competitive affiliate, BellSouth BSE, will market its services only

---

<sup>7</sup> CompTel Petition at 5.

<sup>8</sup> The Georgia Commission in its Order granting an interim certificate of authority to BellSouth BSE recognized that BellSouth BSE's relationship with the BellSouth ILEC was a critical issue. In attempting to address many of the problems created by allowing a second BellSouth entity into the Georgia local exchange market, the Georgia Commission imposed some conditions on BellSouth BSE. However, these conditions simply do not go far enough to protect local exchange competition from BellSouth's ability to engage in the anticompetitive activities discussed in the CompTel Petition and NEXTLINK's comments.

<sup>9</sup> Even if the ILEC competitive affiliate priced its services above the wholesale rate, it will still possess an anticompetitive advantage over other competitive providers because of its ability to share in advertising and other costs with the ILEC. For example, BellSouth BSE, because it is using the BellSouth brand name, could choose not to spend a penny on marketing, and yet still have one of the most recognized identities in BellSouth's in-region territory.

in bundles,<sup>10</sup> BellSouth BSE could price its basic local services at the level of BellSouth's ILEC wholesale rates and still make a profit through the prices for other services included in the bundle.

In addition, to the extent that the ILEC transfers customers to the competitive affiliate, the competitive affiliate would be under no obligation to provide a wholesale discount to its existing rates. In particular, an ILEC could transfer large business customers that are served through customer-specific, contract-service-arrangements ("CSAs") to its affiliate so that the ILEC would no longer have an obligation to provide those CSAs at a wholesale discount to competitors for resale.<sup>11</sup>

Permitting the competitive affiliate of an ILEC access to unbundled network elements would also create significant opportunities for anticompetitive activity. The affiliate could offer services through the recombination of network elements that the ILEC itself does not offer, therefore neutralizing the ILEC's resale obligation altogether. Such an arrangement would give the ILEC the ability and the incentive to divert all development of new services, technology and infrastructure to its new affiliate to avoid its obligations under Section 251.

The existence of a competitive affiliate would also give the ILEC pervasive opportunities to discriminate in favor of its new affiliate. The ILEC could engage in cross-subsidization by misallocating costs between its own operations and those of the competitive affiliate.<sup>12</sup> The

---

<sup>10</sup> GA PSC Hearing, Tr. 137.

<sup>11</sup> The Commission has already faulted BellSouth for its failure to provide to resellers CSAs at a wholesale discount. *Application of BellSouth Corp. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina*, FCC 97-418, para. 224 (rel. Dec. 24, 1997); *Application of BellSouth Corp. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Louisiana*, FCC 98-17 para. 63 (rel. Feb. 4, 1998).

<sup>12</sup> It is likely that all ILEC competitive affiliates will rely on the ILEC itself for resources and support. For example, there is no question that BellSouth BSE will be dependent on the resources of the existing BellSouth corporation. The Georgia Commission itself stated, "There is some dispute, however, as to whether [BellSouth BSE] could, as a

ILEC could share proprietary information with the affiliate that is not available to other competitors. The ILEC could share expertise through the transfer of information or personnel.<sup>13</sup> Some of this could be done simply by creating contracts between the ILEC and its affiliate that provide for favorable terms or sharing of information, while also including contract terms onerous to real competitive carriers, such as a commitment to purchase significant volumes of network elements or resold services for a long period of time.

The issue of access to operations support systems presents even more difficult issues. Even if the ILEC does not openly discriminate in favor of its affiliate by providing access that is different from the access the ILEC provides to other competitive local providers, the ILEC could still provide the affiliate with better access to information on the design and operation of the OSS interfaces used by the ILEC. In addition, by virtue of its relationship with the ILEC, the affiliate might have preferential access to employees who worked on the ILEC's OSS. Finally, the ILEC might build advantages for its competitive affiliate into its design for the OSS interface, such as support for the bundles of service that the affiliate planned to market.

#### **IV. An ILEC's Unregulated, In-Region Affiliate Should Be Subject to the Requirements of Section 251(c).**

NEXTLINK urges the Commission to issue a declaratory ruling that an ILEC affiliate providing local service within the ILEC's in-region territory is a "successor" or "assign" of the ILEC under Section 251(h)(1). NEXTLINK also supports the CompTel Petition's arguments in favor of classifying such affiliates as dominant carriers under the Commission's rules. Such a

---

stand-alone entity, be financially able to support the provision of competitive local exchange service. [BellSouth BSE] has stated that it will rely upon the resources of its parent, BellSouth Corporation for financial support in the initial phase of its provision of competitive local exchange service." See BSE Certificate at 2.

declaratory ruling would resolve existing uncertainty over the status of such affiliates under Section 251(h)(1) and would serve the public interest by preventing ILECs from using affiliates as a means to avoid their obligations under the 1996 Act. It is important that the Commission act expeditiously to resolve this controversy and provide the correct guidance to state commissions before many of the pending applications for ILEC "competitive" affiliates receive state commission authority to operate.<sup>14</sup> As discussed above, the existence of an unregulated, in-region affiliate would provide the ILEC with significant opportunities to evade the ILEC's responsibilities under the 1996 Act and to discriminate in favor of such an affiliate. However, should the Commission decline to issue a declaratory ruling, NEXTLINK would also support the CompTel Petition's request for the Commission to initiate a rulemaking that would establish rules classifying an ILEC in-region affiliate as a "comparable" carrier to the ILEC under Section 251(h)(2).

## **V. Conclusion**

For the foregoing reasons, NEXTLINK supports the CompTel Petition and respectfully requests that the Commission issue a declaratory ruling that an ILEC's in-region affiliate that provides local exchange and/or exchange access services will be treated as a "successor" or "assign" of the ILEC under Section 251(h)(1). In the alternative, NEXTLINK urges the Commission to issue a rule classifying such in-region affiliates as "comparable" carriers under Section 251(h)(2).

---

<sup>13</sup> The Georgia Commission recognized that many of BellSouth BSE's personnel transferred to BellSouth BSE from the existing ILEC, BellSouth Telecommunications, Inc. *Id.*

<sup>14</sup> Besides BellSouth, Ameritech, GTE, Pacific Bell and SNET are in the process of establishing "competitive" affiliates. See CompTel Petition at n.5.



Respectfully submitted,

By: Cathleen A. Massey / RST

Cathleen A. Massey  
Public Policy Counsel  
& Assistant General Counsel  
NEXTLINK Communications, Inc.  
1730 Rhode Island Ave., NW  
Suite 1000  
Washington, DC 20036

Daniel M. Waggoner / RST

Daniel M. Waggoner  
James S. Blitz  
Robert S. Tanner  
Davis Wright Tremaine LLP  
1155 Connecticut Avenue  
Suite 700  
Washington, DC 20036  
Its Attorneys

May 1, 1998

**ATTACHMENT A**

**MOTION FOR RECONSIDERATION OF  
MCI TELECOMMUNICATIONS CORPORATION**

**GEORGIA PUBLIC SERVICE COMMISSION,  
DOCKET NO. 8043-U**

**IN RE: BELL SOUTH BSE, INC. APPLICATION  
FOR A CERTIFICATE OF AUTHORITY  
TO PROVIDE  
LOCAL EXCHANGE TELEPHONE SERVICE**

**BEFORE THE  
GEORGIA PUBLIC SERVICE COMMISSION**

<b>IN RE:</b>	)	
	)	
<b>BELLSOUTH BSE, INC. APPLICATION</b>	)	<b>DOCKET NO. 8043-U</b>
<b>FOR A CERTIFICATE OF AUTHORITY</b>	)	
<b>TO PROVIDE LOCAL EXCHANGE</b>	)	
<b>TELEPHONE SERVICE</b>	)	

**MOTION FOR RECONSIDERATION OF  
MCI TELECOMMUNICATIONS CORPORATION**

COMES NOW MCI Telecommunications Corporation ("MCI") and respectfully requests that the Commission reconsider its decision in this matter and issue an order consistent with the discussion herein.<sup>1</sup>

Even as it seeks reconsideration of portions of the Commission's decision, MCI commends the Commission for recognizing and attempting to limit a number of dangers associated with BellSouth BSE, Inc.'s ("BellSouth BSE") proposal. In particular, MCI agrees with the Commission's attempt to limit risks to local competition associated with BellSouth BSE's implementation of its own facilities and/or transfer of BellSouth Telecommunications Corporation ("BST") facilities to BellSouth BSE. The Commission's requirement that BellSouth BSE return to the Commission for an amendment to its certificate if BellSouth BSE seeks to acquire or build any new facilities alleviates a significant area of concern for the CLECs that intervened in this matter in opposition to the application of BellSouth BSE.

The other very significant area of concern to CLECs, is that of BellSouth BSE acting as a reseller of BST's services. MCI believes that the Commission should reconsider this portion of its order. Resale is especially important in this case because BellSouth BSE claims to only intend to serve as a reseller of BST's services for the near term.

On page 3 of its Order, the Commission states:

Further evidence shows that the Applicant will not have any advantage over any other competing local exchange carrier when it comes to the rates it will pay for the services it

---

<sup>1</sup> The order in this docket was issued on March 9, 1998. However, it is MCI's understanding that due to a clerk's error it was not served on any parties until apparently three weeks later. MCI reviewed its copy of the order on Tuesday, March 31, 1998. For that reason, MCI respectfully requests that the Commission find this motion to be timely filed.

resells. The Applicant will receive the same terms, conditions and prices for all services it receives from BellSouth Telecommunications, Inc. that are available to all other competing local exchange carriers.

Because BST and BellSouth BSE are wholly-owned subsidiaries of the same corporate entity (that happens to serve as the ubiquitous provider of local exchange service to nearly all consumers in the State of Georgia), BellSouth Corporation ("BSC"), the above statement is not accurate. Even if BST requires BellSouth BSE to utilize exactly the same rates, terms, and conditions for its wholesale services as are available to other CLECs in Georgia, BellSouth BSE will still operate at an unfair advantage over all other CLECs when offering the services of BST on a resold basis.

Because both BellSouth BSE and BST serve the same master (the shareholders of BSC), together their primary goal is to enhance the value of BSC stock through any means available. If it benefits BSC for BST to have fewer customers and BellSouth BSE to have more, whether because of BellSouth BSE's pricing flexibility, lower regulatory hurdles, or whatever, BST and BellSouth BSE can work together -- even if only through communications via BSC -- to ensure that this goal is met. It does not further the goals of BSC for a CLEC like MCImetro to have more customers and BST fewer. Opportunities for discriminatory anti-competitive behavior abound and the incentives are clearly present. BST, in order to be responsive to the needs of its parent BSC, will have to cooperate in advancing BellSouth BSE if that is what BSC determines is needed.

Interestingly, subsequent to the hearing on this matter in Georgia, Mr. Scheye was deposed in North Carolina (on March 11, 1998) in conjunction with BellSouth BSE's application for CLEC authority in that state. When questioned about BellSouth BSE's financial statement, Mr. Scheye agreed that the statement indicates that BellSouth BSE intends to attract 325,000 residential customers and 13,000 (both up from zero) regionwide before the end of 1998. Clearly, BellSouth BSE has business plans and goals that distinguish it from any true CLEC heretofore seen by this Commission or any other in that no competitive local exchange carrier actually competing against BellSouth would be able to reasonably project numbers and growth of this magnitude. If fairness and level playing field are the primary issues in this case, as BellSouth BSE seems to indicate, something is fundamentally unfair about the dealings BellSouth BSE appears to expect from BST vis-a-vis true CLECs and the clear advantage BellSouth BSE itself perceives it will have in the local exchange marketplace.

As a particular matter, the mere fact that BellSouth BSE must pay to BST the same wholesale rate for services that other CLECs must pay appears to offer some protection against discriminatory behavior but this perceived protection is illusory. Consider the following hypothetical example:

\$20 - tariffed rate for basic local exchange service ("Service 1")

\$15 - BST wholesale rate for Service 1

\$18 - BellSouth BSE's tariffed rate for Service 1.

\$10 - actual cost to BST (to BellSouth Corporation) to provide the service

\$4 - the costs over and above the wholesale rate that a CLEC must incur to provision Service 1 as a reseller

In the above hypothetical, which resembles actual conditions in certain areas of Georgia, BellSouth Corporation wins under every single scenario. Since it only costs BSC \$10 to provision the service itself, BSC comes out ahead whether BST, BellSouth BSE or a CLEC serves as the provider of Service 1. Of course, BSC naturally prefers to keep as many customers as possible utilizing the service of a BellSouth entity, if only to keep the customer's loyalty, making provisioning by BellSouth BSE and BST likely most desirable for BSC.

Also in the above scenario, there is only one obvious loser -- the CLEC. Since the CLEC must pay BST (and, thereby, BSC) \$15 for every customer to whom it provides Service 1 as a reseller, this comprises the majority of its costs (and offers BSC a very healthy margin at the same time). Unfortunately, because it costs the CLEC \$4 over and above the \$15 it must pay BST/BSC, the CLEC can not offer Service 1 for the same attractive price as BellSouth BSE. BellSouth BSE will, for a variety of reasons, from shared advertising with BST to other shared costs, be able to demonstrate to the Commission that its with its \$18 rate for Service 1, it is not "pricing below cost" as the Commission's order requires. Pricing at \$18, however, keeps CLECs from competing on price to provide Service 1. Ultimately, consumers are the ones who will lose out in this scenario, as competitive options will be eviscerated by CLECs' inability to compete using resale against BSC's "competitive" affiliate.

The only solution to the above problem is to recognize that BellSouth BSE is indeed an incumbent local exchange carrier under the Telecommunications Act of 1996 and the rules of the State of Georgia and to require that all rules applicable to ILECs apply to BellSouth BSE as well. In this manner, BellSouth BSE's \$18 rate would be available for resale minus the wholesale discount established by the Commission. If BellSouth Corporation -- the parent of BST and full owner and creator of affiliate corporate entities like BellSouth BSE -- can find a way to offer

Service 1 to end users for \$18, then this rate should be available for CLECs and should be the rate to which the wholesale discount applies. BST's \$20 becomes irrelevant to CLECs and to end users in a world in which BellSouth BSE charges \$18 and attracts over 300,000 customers in one year.

The issue of whether BellSouth BSE is properly considered an ILEC has been raised at the FCC by a petition filed by CompTel, the Florida Competitive Carriers Association and the Southeastern Competitive Carriers Association. Attached as Exhibit 1 is a copy of this petition.

### **CONCLUSION**

In conclusion, MCI respectfully requests that the Commission reconsider its findings with respect to the propriety of BellSouth BSE operating as a CLEC reseller of BST's services. MCI believes that a closer look demonstrates that such a scenario benefits no one but the BellSouth corporate entities at the expense of CLECs and nascent competition in the local exchange market in Georgia.

Consistent with this discussion, MCI respectfully requests that the Commission require that BellSouth BSE be treated as an ILEC for all regulatory purposes.

Respectfully submitted this 6th day of April, 1998.

Susan J. Berlin, Esq.  
MCI Telecommunications Corporation  
780 Johnson Ferry Road, Suite 700  
Atlanta, Georgia 30342

David I. Adelman, Esq.  
Sutherland, Asbill & Brennan, LLP  
999 Peachtree Street, N.E.  
Atlanta, Georgia 30309

*Attorneys for MCI Telecommunications  
Corporation*

**ATTACHMENT B**

**INTERIM CERTIFICATE OF AUTHORITY TO  
PROVIDE COMPETITIVE LOCAL EXCHANGE  
TELECOMMUNICATIONS SERVICES**

**GEORGIA PUBLIC SERVICE COMMISSION,  
DOCKET NO. 8043-U**

**IN RE: BELL SOUTH BSE, INC. APPLICATION  
FOR A CERTIFICATE OF AUTHORITY  
TO PROVIDE  
LOCAL EXCHANGE TELEPHONE SERVICE**

**INTERIM CERTIFICATE OF AUTHORITY TO  
PROVIDE COMPETITIVE LOCAL EXCHANGE  
TELECOMMUNICATION SERVICES**

Certificate No. L-068

Approved: March 5, 1998

Issued: \_\_\_\_\_

**IN RE:**           DOCKET NO. 8043-U; BellSouth BSE, Inc.'s Application for Certificate of Authority to  
Provide Local Exchange Telephone Service

**BY THE COMMISSION:**

**I.  
BACKGROUND**

On September 9, 1997, BellSouth BSE, Inc. ("Applicant" or "BSE") filed with the Georgia Public Service Commission ("Commission") an application for a certificate of authority to provide local exchange telephone service. This application was made pursuant to O.C.G.A. § 46-5-163. Under the authority granted the Commission in O.C.G.A. § 46-2-7, this matter was assigned for hearing before a hearing officer and on December 15, 1997, the hearing was held.

Numerous parties filed petitions or applications for intervention. Those parties are the Consumers' Utility Counsel ("CUC"); MCI Telecommunications Corporation and MCI Access Transmission Services (collectively referred to hereafter as "MCI"); BellSouth Telecommunications, Inc. ("BST"); DeltaCom, Inc. ("DeltaCom"); Access Integrated Networks, Inc. ("Access"); Georgia Comm South, Inc. ("Georgia Comm"); ICG Telecom Group ("ICG"); AT&T Communications of the Southern States, Inc. (AT&T); American

Communications Services, Inc. ("ACSI"); Teleport Communications Atlanta ("Teleport"); the Georgia Public Communications Association, Inc. ("GPCA"); and NEXTLink Georgia, Inc. ("NEXTlink"). No objection was raised to the intervention of any of the above mentioned parties and all were granted intervention.

At the hearing on December 15, 1997 the Applicant sponsored the testimony of Mr. Robert Scheye, Vice President, Supplier Development and Business Relations for the Applicant. A number of intervenors (MCI, DeltaCom, AT&T, ACSI, and ICG) sponsored the testimony of Mr. L. G. Sather, President of Synergy-1 Resource & Consulting, Inc.



While there is not any sufficient cause for denying the Applicant a certification, there are certain conditions that may be imposed. The Applicant shall use the same operating system support (OSS) as all other competing local exchange carriers. The Applicant should not, because of its affiliation, have an advantage in the ordering of service for its customers. The Applicant should have no greater access to customer service records than any other competing local exchange carrier. Testimony of the Applicant is that it will not offer any services to its customers that are not also offered by the incumbent local exchange carrier, BellSouth Telecommunications, Inc.

Certain reporting requirements shall also be imposed. An annual filing with the Commission demonstrating that the Applicant is not pricing below cost and that cross-subsidization from BellSouth Telecommunications is not occurring. Additionally, on a quarterly basis, the Applicant shall file with the Commission, under Trade Secret protection, a report showing the number of customers who have migrated to the Applicant from BellSouth Telecommunications, Inc. and the revenues the Applicant has gained from this migration. Included in this quarterly filing shall be a schedule or schedules, demonstrating the number units purchased from BellSouth Telecommunications, Inc. and the price per unit paid to BellSouth Telecommunications, Inc.

## II. CONCLUSIONS OF LAW

The Hearing Officer certifies the record in this docket to the Commission and issues this recommendation pursuant to O.C.G.A. §§ 46-2-58(d) and 50-13-17(a). Based upon the testimony and evidence, the Hearing Officer finds that the Applicant has shown that it possesses satisfactory financial and technical capability pursuant to O.C.G.A. § 46-5-163(h) in order to be granted an interim certificate, consistent with the Commission's guidelines in its Docket No. 5778-U for the issuance of interim certificates of authority for the provision of local exchange service.

### WHEREFORE, it is

**ORDERED**, that the above numbered certificate be hereby granted to BellSouth BSE, Inc, whose principal business address is 2727 Paces Ferry Road, Suite 1100, Atlanta, Georgia 30339, to provide resold competitive local exchange telecommunications services.

**ORDERED FURTHER**, that BellSouth BSE, Inc, is hereby granted authority to provide resold competitive local exchange telecommunications services in the following exchanges:

Acworth	Barnesville	Cave Spring	Cumming
Adairsville	Baxley	Cedartown	Cusseta
Albany	Blackshear	Chamblee	Dallas
Alpharetta	Bogart-Statham	Claxton	Douglasville
Americus	Bowdon	Clermont	Dublin
Appling	Bremen	Cochran	Duluth
Arlington	Brunswick	Colquitt	Eastman
Athens	Buchanan		Eatonton
Atlanta	Buford	Columbia	Elberton
Augusta	Calhoun	Concord	Fairburn
Austell	Camilla	Conyers	Fayetteville
Baconton	Carrollton	Cordele	Flowery Branch
Bainsbridge	Cartersville	Covington	Forsyth

At the direction of the hearing officer, the Applicant filed a correction to its tariff on December 22, 1997. All parties were given an opportunity to review the tariff correction and request an additional hearing if they so desired. However, no party requested the additional hearing. Post hearing briefs and reply briefs were filed on January 15, 1998 and January 21, 1998, respectively.

Evidence presented by the Applicant and the intervenors is uncontroverted on whether the Applicant has the technical capability to provide the services for which it is applying. The Applicant is staffed and operated by personnel with experience in the telecommunications industry. Many, if not all, of these personnel who transferred to the Applicant's organization came from BellSouth Telecommunications, Inc.

There is some dispute, however, as to whether the Applicant could, as a stand-alone entity, be financially able to support the provision of competitive local exchange service. The Applicant has stated that it will rely upon the resources of its parent, BellSouth Corporation for financial support in the initial phase of its provision of competitive local exchange service. The need for financial support from an affiliate to an applicant has not been sufficient cause to make this Commission deny certification. Many of the competing local exchange carrier applicants are startup companies. That the parent affiliate of the Applicant is also the parent affiliate of the incumbent local exchange carrier is not a fact, which will disqualify the Applicant from certification.

The critical issue that is raised in this proceeding stems from the affiliate relationship the Applicant has with the predominant incumbent local exchange carrier in Georgia, BellSouth Telecommunications, Inc. Testimony presented by the intervenors raises questions as to whether the service expected to be provided by the Applicant will indeed be in competition with BST. Or, will the entry of the Applicant into the local exchange market simply garner for the parent corporation an even larger share of the market in Georgia and thereby thwart the movement toward telecommunications competition in the state. The Applicant argues that the question of its affiliation with the incumbent local exchange carrier should not even be considered. They argue that the law in Georgia governing the certification of competitive local exchange carriers requires certification upon the applicant's meeting the technical and financial capability standards.

The intervening parties, who oppose the granting of a certificate to the Applicant to serve the same exchanges as BST, are generally not opposed to a granting of the certificate to the Applicant to serve the exchanges that are outside the BST service area. Such positions advocate that any certificate of authority that may be granted should carry with it certain conditions that restrict the service territory to that not presently served by BST. Support for such positions are found in the decisions by other states commissions in denying an incumbent local exchange carrier's affiliate a competing local exchange certificate. The decision by the Texas Public Utility Commission (Docket No. 16495, November 20, 1997) cited as support for denying this Applicant's certification, is distinguishable in that that decision was based upon specific Texas laws.

Further evidence shows that the Applicant will not have any advantage over any other competing local exchange carrier when it comes to the rates it will pay for the services it resells. The Applicant will receive the same terms, conditions and prices for all services it receives from BellSouth Telecommunications, Inc. that are available to all other competing local exchange carriers.

Fort Valley	Leary	Pooler	Thomasville
Franklin	Leesburg	Richland	Thomson
Gainesville	Lithonia	Rockmart	Tifton
Gay	Loganville	Pome	Tucker
Gibson	Louisville	Roopville	Tybee Island
Grantville	Lula	Rossville	Valdosta
Greensboro	Lumber City	Royston	Vidalia
Greenville	Lumpkin	Rutledge	
Griffin	Luthersville	St. Simons Island	Villa Rica
Hamilton	Lyons	Sandersville- Tennille	Wadley
Hampton	Macon	Sardis	Warner Robins
Harlem	Madison	Savannah	Warrenton
Hazelhurst	Marietta	Senoia	Watkinsville
Hephzibah	McCaysville	Smithville	Waycross
Hogansville	McDonough	Smyrna	Waynesboro
	Millen	Social Circle	Woodsbury
Jackson	Monticello	Sparks	Woodstock
Jekyll Island	Newman	Sparta	Wrens
Jesup	Newton	Stockbridge	Wrightsville
Johnson Corner	Norcross	Stone Mountain	Zebulon
Jonesboro	Palmetto	Swainsboro	
Kingston	Panola	Sylvester	
LaGrange	Pelham	Tallapoosa	
Lake Park	Pine Mountain	Temple	
Lawrenceville		Tennga	

**ORDERED FURTHER**, that the tariff filed by the Applicant be hereby approved.

**ORDERED FURTHER**, that BellSouth BSE, Inc. shall on all advertisements and announcements pertaining to this certification and the service which it will provide pursuant to this certification, place a disclaimer that it is not the same entity as the incumbent local exchange carrier. BellSouth Telecommunications, Inc.

**ORDERED FURTHER**, that granting this certificate of authority to BellSouth BSE, Inc. does not relieve BellSouth Telecommunications, Inc. of any of its incumbent local exchange carrier responsibilities, or obligations, under the Georgia Telecommunications and Development Act and the Federal Telecommunications Act of 1996.

**ORDERED FURTHER**, that if BellSouth BSE, Inc. proposes to acquire or build any facilities, including switching, they must first come to this Commission and seek an amendment to this certificate.

**ORDERED FURTHER**, that BellSouth BSE, Inc. shall file with the Commission on an annual basis information demonstrating that it is not pricing below cost and that cross-subsidization from BellSouth Telecommunications, Inc. is not occurring.

**ORDERED FURTHER**, that BellSouth BSE, Inc. shall on a quarterly basis file with this Commission a report showing the number of customers who have migrated to it from BellSouth Telecommunications, Inc., the revenues gained from such migrations, the number of units purchased from BellSouth Telecommunications, Inc. and the price per unit paid to BellSouth Telecommunications, Inc.

**ORDERED FURTHER**, that the interim certificate is issued subject to the conditions adopted by the Commission in Docket No. 5778-U and subject to all other applicable requirements and rules of the Commission.

**ORDERED FURTHER**, that BellSouth BSE, Inc. shall contribute to the Universal Access Fund as prescribed in Docket No. 5825-U.

**ORDERED FURTHER**, that jurisdiction over this matter is expressly retained for the purpose of entering such further Order or Orders as this Commission may deem just and proper.

**ORDERED FURTHER**, that any motion for reconsideration or rehearing in this case shall not have the effect of staying this Order of Commission, except insofar as the Commission may otherwise provide.

**BY ORDER OF THE GEORGIA PUBLIC SERVICE COMMISSION**, this 5th day of March 1998.

\_\_\_\_\_  
Deborah Flannagan  
Assistant Executive Secretary

\_\_\_\_\_  
Mac Barber  
Chairman

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## CERTIFICATE OF SERVICE

Robert S. Tanner, an attorney in the law offices of Davis Wright Tremaine LLP, do hereby certify that true and correct copies of the foregoing Comments of NEXTLINK Communications, Inc. were sent this first day of May, 1998, by first-class mail, postage prepaid, unless otherwise indicated, to the following:

David L. Sieradzki  
Hogan & Hartson L.L.P.  
Columbia Square  
555 13<sup>th</sup> Street, NW  
Washington, DC 20004

Chairman William E. Kennard\*  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Susan Ness, Commissioner\*  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Harold W. Furchtgott-Roth\*  
Commissioner  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Michael K. Powell\*  
Commissioner  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Gloria Tristani,\*  
Commissioner  
Federal Communications Commission  
1919 M Street, NW  
Washington, DC 20554

Janice Myles\*  
Federal Communications Commission  
1919 M Street, NW, Room 544  
Washington, DC 20554

  
Robert S. Tanner

May 1, 1998

\*Hand Delivery